

E-299, 132/SA-89-136ADDRESSING SHOW CAUSE FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of an Application by the City of Rochester, Minnesota, for an Interim Service Order to Serve Certain Recently Annexed and Platted Undeveloped Land Within the City of Rochester Known as Viking Hills Third Subdivision and North Park Third Subdivision

ISSUE DATE: June 30, 1989

DOCKET NO. E-299, 132/SA-89-136

ORDER ADDRESSING SHOW CAUSE FILING

PROCEDURAL HISTORY

In December, 1988 the City of Rochester (City) filed an application with the Minnesota Public Utilities Commission (the Commission) to adjust its service area to include all of the areas it has annexed since 1974 in its service area and to determine compensation for these areas (Docket No. E-132, 299/SA-88-996).

On March 7, 1989, the City submitted an application to the Commission requesting authority to provide service to the Viking Hills Third Subdivision and the North Park Third Subdivision while compensation is being determined. The City had recently annexed these areas (August 11, 1988 and June 21, 1988 respectively) which are in the exclusive service territory of People's Cooperative Power Association (People's or the Cooperative).

On May 17, 1989, People's filed an affidavit from its director of engineering and operations, Paul E. Melby, which stated that the City had extended service into the North Park Third Subdivision and provided electric service to a building site.

The Commission considered these matters at meetings on May 18 and 23, 1989.

On May 23, 1989, the Commission issued its ORDER DENYING INTERIM SERVICE RIGHTS TO THE CITY OF ROCHESTER, REQUIRING THE CITY OF ROCHESTER TO CEASE AND DESIST FROM PROVIDING SERVICE, AND TO SHOW CAUSE in this matter. That Order required the City to:

1. show cause why it should not be found to have knowingly and intentionally violated Commission Orders in In the Matter of a Complaint of People's Cooperative Power Association, Inc. Against the City of Rochester, Docket No. E-132, 299/SA-88-660 and Minn. Stat. §§ 216B.40 and

216B.44 (1988) as alleged in the May 16, 1989 affidavit of Paul E. Melby;

2. how cause why it should not be subject to the maximum penalties of Minn. Stat. §§ 216B.57 and 216B.59 (1988); and
3. identify all points within People's Cooperative Power Association, Inc.'s assigned service area where the City is serving and such service has not been authorized by the Commission and show cause why it should not be required to cease and desist from providing service at each of those points and remove all unauthorized facilities presently in place.

The City filed its Response to the Order to Show Cause on June 5, 1989.

The Commission met on June 14, 1989 to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission must determine whether the City provided temporary electric service in the North Park Third Subdivision as alleged in the Melby affidavit and in doing so knowingly and intentionally violated Minn. Stat. §§ 216B.40 and 216B.44 (1988) and Commission Orders in Docket No. E-132, 299/SA-88-660.

During the Commission meeting of May 18, 1989 and in its June 5, 1989 filing, the City admitted that it had provided the electric service alleged in the Melby affidavit. However the City stated that in doing so it did not knowingly or intentionally violate Minnesota law or Commission Orders. The City argued that the Commission's directions in Docket No. E-132, 299/SA-88-660 were not clear to the City and that a lower echelon customer service representative of the Utility Department had authorized two temporary hookups in the North Park Third Subdivision to these facilities in early May. Finally, the City stated that to the extent this is a problem within its Public Utility Department, it has now been remedied.

The Commission finds that Rochester did, in fact, extend electric service to an area it was not authorized to serve. This violates the Commission's February 21, 1989 ORDER AFTER RECONSIDERATION CLARIFYING ORDER in Docket No. E-132, 299/SA-88-660. There the Commission determined that a utility is providing service to an area if that area is within its assigned service territory and if facilities are in place to provide service to new customers, even when the actual area contains no existing customers. Further at p. 6 the Commission wrote:

During the time that compensation is being determined, either by the parties or by the Commission at the request of one of the parties, the law provides that the utility that is being displaced continues to serve the area and may extend service to the area in dispute unless the Commission after notice and hearing determines that it is not in the public interest for the

displaced utility to do so.

Clearly, the displaced utility, People's in this instance, had the right to serve the Viking Hills Third Subdivision which is part of its assigned service area until compensation was determined and paid or until the Commission found that it was not in the public interest for People's to provide service to additional points of delivery in that area. Neither of these events had happened when Rochester starting serving the Viking Hills Third Subdivision.

However, the Commission finds that the decision to permit the hookup was made by a customer service representative who believed that this was a routine situation, a connection made from facilities that had been in place, not an extension of new facilities without Commission authorization. (The North Park Third Subdivision is immediately adjacent to the North Park Second Subdivision where the City has been authorized to serve while the issue of compensation is being determined. The unauthorized service provided to North Park Third was made from a service pedestal already installed when the Commission authorized Rochester to serve North Park Second.) The Commission will accept the City's explanation for its actions. The Commission concludes that this behavior does not meet the statutory standard of a knowing and willful violation of Minnesota law or Commission Orders that results in referral to the Attorney General for appropriate legal action.

To prevent any recurrence of this type of situation, in its May 23 Order, the Commission required the City to refer all future requests for new service outside of its assigned service territory to the utility entitled to serve that territory under law. The City has stated that it understands the Commission's direction and has assured the Commission that procedures have been instituted to avoid this problem. The City also indicated that it clearly understands the Commission's position that a municipality has no independent right to provide temporary, interim, or permanent service to anyone in a service area assigned to another utility and which possesses no utility facilities (including undeveloped bare ground) without receiving Commission approval to provide the service. The City is on notice that the Commission will not tolerate any repetition of Rochester's unauthorized service extensions.

Finally, the Commission finds that the issues of whether the City should be ordered to cease and desist from providing service within People's authorized service area where the City has not been authorized to do so by the Commission and whether the City should be ordered to remove facilities in those circumstances can better be addressed in a consolidated proceeding that is currently being investigated by the Department of Public Service (Department). In the Matter of People's Cooperative Power Association's Complaint that the City of Rochester Has Repeatedly Extended Service into People's Exclusive Service Area, Docket No. E-132, 299/SA-88-549 and In the Matter of the Application of the City of Rochester to Adjust its Service Area Boundaries with People's Cooperative Power Association, Docket No. E-132, 299/SA-88-996.

The Commission will order the Department to address the cease and desist and removal of facilities issues in its investigation in that consolidated case. If the Commission needs additional information it will order further investigation.

ORDER

1. The Commission hereby determines that the activities of the City of Rochester described above do not constitute a knowing and intentional violation of the Commission's Orders in Docket No. E-132, 299/SA-88-660 or Minn. Stat. §§ 216B.40 and 216B.44 (1988).
2. The Department of Public Service shall address the cease and desist and removal of facilities issues described above in its investigation in Docket Nos. E-132, 299/SA-88-549 and E-132, 299/SA-88-996.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)